UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,823	12/29/2000	Shlomi Harif	AUS9000878US1	8488

35617	7590	12/15/2005

DAFFER MCDANEIL LLP
P.O. BOX 684908
AUSTIN, TX 78768

EXAMINER
POLLACK, MELVIN H

ART UNIT	PAPER NUMBER
2145	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/751,823
Filing Date: December 29, 2000
Appellant(s): HARIF, SHLOMI

Melvin H. Pollack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04 October 2005 appealing from the Office action

mailed 04 May 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,112,225	KRAFT et al.	8-2000
6,421,653	MAY	7-2002
6,732,141	ELLIS	5-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-3, 5-12, 17, 25, and 26 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Kraft et al. (6,112,225) in view of May (6,421,653).

3.   For claims 1, 12, 17, 25 and 26, Kraft teaches a system (see abstract) for identifying and

binding a process (col. 1, lines 5-20), said system comprising a network server (Fig. 1, #102)

adapted to receive (Fig. 5, #504) a payload (col. 2, lines 14-16) from a network client (col. 7,

lines 1-8; remote computer) over a network (Fig. 1, #104), wherein the payload comprises a

request for process execution associated with a task (col. 1, lines 5-20), and wherein the server is

further adapted to evaluate the payload (col. 6, line 60 – col. 7, line 30), create an agent from the

payload (Fig. 5, #506), and forward the agent (Fig. 5, #510)to a network host (Fig. 1, #106),

dissimilar from the network client (col. 4, lines 29-40) for process execution associated with the

agent (Fig. 6).

4.   Kraft does teach security considerations (col. 10, lines 5-35), but does not expressly

disclose that the network client and network host are anonymous from each other. May teaches a

method (abstract) of process execution requests associated with tasks (col. 1, line 30 – col. 7, line

50) and coordination between a client (Fig. 1, #20_1), network server (Fig. 1, #12), and host

(Fig. 1, #20_4) in which anonymity between buyers and sellers is maintained (Fig. 15). At the

time the invention was made, one of ordinary skill in the art would have used May's anonymous

automated auction method in Kraft's automated auction in order to better ensure fairness (col.

43, lines 45-50).

5.   For claim 2, Kraft teaches that the network is a heterogeneous network (col. 4, lines 10-

20, 40-50).

6.   For claim 3, Kraft teaches that the heterogeneous network comprises a network of

computational devices (Fig. 1).

7.   For claim 5, Kraft teaches that the network of computational devices comprises a network

of multiple platforms (col. 4, lines 29-40).

8.   For claim 6, Kraft teaches that the network server comprises a computational device (Fig.

2, #102).

9.   For claim 7, Kraft teaches that the network server comprises a processor (col. 4, lines 20-

30), a storage device (Fig. 3, #306; col. 3, line 50 – col. 6, line 10), an evaluating program

adapted to analyze the payload (Fig. 2, #214), and a binding program adapted to create an agent

from the payload (col. 4, line 60 – col. 5, line 2).

10.   For claim 8, Kraft teaches that the payload comprises a set of programming instructions,

wherein the set of programming instructions are associated with the process execution (col. 6,

lines 25-40), and a data set, wherein the data set is associated with the process execution (col. 5,

lines 35-45).

11.   For claim 9, Kraft teaches that the payload further comprises a set of security

permissions, wherein the set of security permissions are associated with the process execution

(col. 10, lines 5-35), and a financial data set, wherein the financial data set is associated with the

process execution (col. 9, line 60 – col. 10, line 5).

12.   For claim 10, Kraft teaches that the agent comprises the payload containing programming

instructions which, when executed by the server, a software data set is requested and configured

to provide the payload the ability to perform the process execution (col. 7, lines 10-30).

13.   For claim 11, Kraft teaches that the software data set comprises a set of functional

parameters, a set of software libraries, or a set of activating programming instructions (col. 7,

lines 10-30).

14.   Claims 13-16, and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Kraft and May as applied to claims 1, 12, 17 above, and further in view of Ellis (6,732,141).

15.   For claims 13 and 18, Kraft and May do not expressly disclose evaluating a payload

comprises authenticating the payload and checking the payload for conformance to a set of

protocols. Ellis teaches this limitation (col. 11, line 53 – col. 12, line 20). At the time the

invention was made, one of ordinary skill in the art would have added this limitation to Kraft to

ensure that network hosts could perform the task (col. 11, lines 25-50).

16.   For claims 14 and 19, Kraft and May do not expressly disclose evaluating the payload

comprises compiling a profile of the process execution. Ellis teaches this limitation (col. 10,

lines 34-55). At the time the invention was made, one of ordinary skill in the art would have

added this limitation to Kraft to ensure that network hosts could perform the task (col. 11, lines

25-50).

17.   For claims 15 and 20, Kraft and May do not expressly disclose evaluating the payload

comprises simulating the execution of the process. Ellis teaches this limitation (col. 10, lines 9-

23). At the time the invention was made, one of ordinary skill in the art would have added this

limitation to Kraft in order to provide cost estimates before processing (col. 10, lines 13-15).

18.   For claims 16, 21, and 22, Kraft and May do not expressly disclose simulating the

execution of the process comprises creating a portion of the process and executing it. Ellis

teaches this limitation (col. 19, lines 30-40). At the time the invention was made, one of

ordinary skill in the art would have added this limitation to Kraft in order to provide cost

estimates before processing (col. 10, lines 13-15).

19.   Claims 23 and 24 are drawn to the limitations in claims 10 and 11, respectively.

Therefore, since claims 10 and 11 are rejected, claims 23 and 24 are also rejected for the reasons

above.

(10) Response to Argument

Claims 1, 12, and 17 recite the limitation to "forward the agent to a network host,

unknown to and dissimilar from the network client." Claims 25 and 26 recite the limitation "a

network client and network host maintained anonymous from each other *for* receiving a payload

from the network client." No other limitations regarding the anonymity of the network devices is

given in any of the claims. The examiner interprets these items, then, to mean anonymity

between the client and host from the time that the network server forwards the agent and/or

payload, to the time that the host receives the transmission. To fulfill the limitation, one need not

show maintaining of anonymity at any time after the reception of the payload, and particularly

not during any time of the process execution associated with the agent. Further, one need not

show anonymity between the server and the host or between the server and the client. (Final

action, Para. 9).

In response to applicant's argument that the references fail to show certain features of

applicant's invention, it is noted that the features upon which applicant relies (i.e., "anonymity is

maintained between a client and a host (P. 4, lines 20-23)") are not recited in the rejected

claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993). As shown above, maintenance of anonymity is only taught for

the period of payload transmission and reception, and the anonymity may be dropped after this.

Thus, the applicant's statement regarding May's eventual ending of anonymity (P. 5, lines 20-31)

does not apply in regards to the claims as drawn, as this activity clearly occurs at the end of the

process execution associated with the transmitted agent.

The applicant further admits that May teaches an automated system for distributing

anonymous price and position information (P. 7, lines 9-12). This example further shows that

the anonymity is maintained at the point of transmission.

In response to applicant's argument that there is no suggestion to combine the references,

the examiner recognizes that obviousness can only be established by combining or modifying the

teachings of the prior art to produce the claimed invention where there is some teaching,

suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the applicant argues that anonymity would be undesirable to Kraft (P. 6, lines 23-28)

on the grounds that Kraft teaches that options include requiring digital signatures or

authentication (P. 6, lines 28-34). First, these are only sample embodiments and do not by

themselves preclude a Kraft combination involving anonymity. In fact, there are clearly

embodiments upon which anonymity is not required (Fig. 5). Second, the authentication

processes would occur at Kraft's server (#102), thus potentially maintaining anonymity between

the client (remote computer) and performing host (#106). Third, such certifications occur after

reception of the imported task, and thus do not preclude anonymity before or during reception of

the imported task. Assuming argumendo that May teaches authentication at the end of the task,

as the applicant claims (P. 7, lines 4-7), the combination would not destroy the primary

invention, and therefore the combination may be allowed, given proper motivation.

May's purpose is to allow transactions between initially anonymous parties while still

providing a way for them to negotiate with the same power and security as initially non-

anonymous parties (col. 2, lines 1-50). As shown above, Kraft teaches an interest in developing

security trades with a remote client that may be initially anonymous. May teaches that the

reasons for anonymity are numerous, but include the fact that without anonymity, certain parties

may not wish to deal with certain other parties (col. 2, lines 50-65), and may even cancel the

transaction before it is completed, indicating a desire to ensure the maintenance of anonymity for

some time, or manipulate the price based on the party identity (col. 43, lines 43-50). Thus, at the

time the invention was made, one of ordinary skill in the art would have added May's anonymity

handling to Kraft in order to provide remote clients with assurance of non-preferential treatment

based on identity, while still allowing Kraft servers to keep their security measures.

As for claims 13-15 and 18-20, applicant argues that Ellis does not expressly disclose a

payload, let alone the evaluation and processing thereof. Ellis teaches a method and system

(abstract) of making deals between clients and network hosts to perform parallel processing (col.

1, line 1 – col. 5, line 67). The examiner uses the particular embodiment (Figs. 3-9) wherein the

system "would also estimate to the individual PC user prospectively the amound of network

resources needed to fulfill a processing request (col. 10, lines 9-12)," the processing request

being the payload of Ellis, and which includes the process for which the host(s) will execute

upon agreement. To determine whether to process the payload, the network first operates to

evaluate the process request in order to determine whether the payload may be processed, how

much to charge, etc. (Columns 10-12, as recited above.) The signal indicates to the client that

the process request has been authenticated and that it properly conforms to a set of protocols, as

defined by comparisons of configuration and availability (col. 11, lines 53-65). The system also

builds a profile of the payload and the client (col. 10, lines 34-55), and this profile in turn

modifies process execution elements such as the priority of executing a particular process

request. The system further simulates the possible execution so as to estimate the resources

needed and project costs before executing the process request (col. 10, lines 10-23).

For the reasons above, the rejection is maintained.

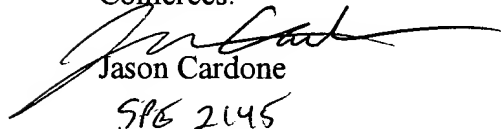**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Melvin H. Pollack

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER

Conferees:

Jason Cardone
SPE 2145

Dharia Rupal